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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 **LAW OFFICES OF BLOMBERG,**  
12 **BENSON & GARRETT, INC.,**

13 Plaintiff,

14 v.

15 **BRENDA LOVELL, et al.,**

16 Defendants.  
17

Case No. 5:12-cv-00863-ODW (JCx)

**ORDER GRANTING UNITED  
STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES'S  
MOTION TO DISMISS AND  
REMANDING ACTION TO SAN  
BERNARDINO COUNTY  
SUPERIOR COURT [6]**

18 Defendant Department of Health and Human Services's ("HHS") moves to  
19 dismiss Plaintiff Law Offices of Blomberg, Benson & Garrett's Complaint for lack of  
20 subject-matter jurisdiction. (Dkt. No. 6.) Because Plaintiff failed to oppose HHS's  
21 Motion, and for the reasons discussed in Defendant's papers, the Court **GRANTS**  
22 Defendant's Motion to Dismiss and **REMANDS** this action to San Bernardino  
23 Superior Court.

24 Central District of California Local Rule 7-9 requires an opposing party to file  
25 an opposition to any motion at least 21 days prior to the date designated for hearing  
26 the motion. L.R. 7-9. Additionally, Local Rule 7-12 provides that "[t]he failure to  
27 file any required paper, or the failure to file it within the deadline, may be deemed  
28 consent to the granting or denial of the motion." L.R. 7-12.

1 The hearing on Defendant's motion was set for August 20, 2012. Plaintiff's  
2 opposition was therefore due by July 30, 2012. As of the date of this Order, Plaintiff  
3 has not filed an opposition, nor any other filing that could be construed as a request  
4 for a continuance. Plaintiff's failure to oppose may therefore be deemed consent to  
5 the granting of Defendant's Motion.

6 Nevertheless, the Court has reviewed Plaintiff's Complaint and considered the  
7 HHS's arguments in support of its Motion. For the reasons discussed in the HHS's  
8 moving papers, the Court determines that it lacks subject-matter jurisdiction over  
9 HHS because HHS has not waived sovereign immunity. The Court therefore  
10 **GRANTS** the Motion to Dismiss. The August 20, 2012 hearing on this matter is  
11 **VACATED**, and no appearances are necessary.

12 In addition, HHS removed this action to federal court on grounds that "HHS is a  
13 federal agency, and is entitled to the federal defense of sovereign immunity and other  
14 federal defenses." (Notice of Removal ¶ 3.) HHS's dismissal from this action  
15 deprives this Court of the sole ground for federal question jurisdiction, and there is no  
16 indication that diversity jurisdiction exists in this matter. Accordingly, the Court  
17 hereby **REMANDS** this action to the San Bernardino Superior Court.

18  
19 **IT IS SO ORDERED.**

20  
21 August 6, 2012

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24 **HON. OTIS D. WRIGHT, II**  
25 **UNITED STATES DISTRICT JUDGE**  
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